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June 7, 1995

William F. Caton  
Acting Secretary  
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Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: PR Docket No. 93-61

Dear Mr. Caton:

Enclosed for filing on behalf of CellNet Data Systems, Inc. are an original and eleven copies of a Reply to Oppositions to Petition for Reconsideration in the above-referenced docket.

Please date stamp and return the copy provided for that purpose.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

Wilkinson, Barker, Knauer & Quinn

By: Lawrence J. Movshin

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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, DC 20554

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JUN - 7 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Amendment of Part 90 of the )  
Commission's Rules to Adopt )  
Regulations for Automatic )  
Vehicle Monitoring Systems )

PR Docket No. 93-81

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To: The Commission

**REPLY TO  
OPPOSITIONS TO  
PETITION FOR RECONSIDERATION**

CELLNET DATA SYSTEMS, INC.

WILKINSON, BARKER, KNAUER & QUINN

1735 New York Avenue, N.W.  
Washington, D.C. 20006  
(202) 783-4141

Its Attorneys

June 7, 1995

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, DC 20554

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Regulations for Automatic )  
Vehicle Monitoring Systems )

PR Docket No. 93-61

To: The Commission

**REPLY TO OPPOSITIONS TO  
PETITION FOR RECONSIDERATION**

CELLNET DATA SYSTEMS, INC. ("CELLNET"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby replies to Oppositions <sup>1/</sup> to CELLNET's Petitions for Reconsideration and Clarification <sup>2/</sup> filed in response to the *Report and Order* (FCC 95-41, released Feb. 6, 1995, Erratum, DA 95-265, released Feb. 17, 1995, Second Erratum, released Mar. 1, 1995) in the above-captioned proceeding. For the reasons discussed below, CELLNET continues to advocate a realistic approach to the accommodating the cohabitation of both licensed and

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<sup>1</sup> A total of 18 other Oppositions were filed. This Reply addresses primarily the Oppositions filed by Pinpoint Communications, Inc. ("Pinpoint"), AirTouch Teletrac ("Teletrac"), Southwestern Bell Mobile Systems ("SBMS") and MobileVision, L.P. ("MobileVision") (collectively the "LMS Parties").

<sup>2</sup> The "CELLNET Petition". CELLNET has also filed an Opposition to Petitions for Reconsideration (the "CELLNET Opposition") in this proceeding.

unlicensed devices in the 902-928 MHz band. The rules adopted in the *Report and Order* – properly clarified as discussed in the CellNet Petition <sup>3/</sup> should generally provide for the sharing of this band among low-powered, advanced technology devices and systems operating under Part 15 and those licensed LMS systems that are operating (or might soon develop) under the regulatory regime for Location and Monitoring Services systems under Part 90.

In fact, the pleadings to date demonstrate that with the exception of changes to the grandfathering provisions (which CELLNET views as overly expansive) what may be needed to allow this proceeding substantially to achieve its objective is clarification of the administrative provisions governing the use of the band by LMS licensees. It is now clear that adoption of the fundamental changes suggested by several LMS Parties and/or their opponents will merely serve to continue the contentious (and often pugnacious) debate that has characterized this proceeding. Such debate will not serve any party's or the public's

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<sup>3</sup> As CELLNET (and other Part 15 manufacturers) have noted, it is particularly important that the FCC clarify and confirm the restrictions on permitted uses and interconnection to assure that the LMS systems are not developed to be hybrid messaging and/or personal communications services systems.

interest in obtaining some certainty in the use of this valuable spectrum resource. <sup>4/</sup>

On the other hand, CELLNET strongly disputes those LMS Parties who advocate positions which would hinder the ability of Part 15 users to share adequately and in a fair manner the 902-928 MHz spectrum. These Oppositions run contrary to the spirit of the *Report and Order* encouraging the sharing of spectrum and attempting to more efficiently accommodate a variety of spectrum users. The Commission must therefore reject the arguments of the LMS Parties which seek to permit the use of any wideband forward links prior to demonstrating that there is no threat of interference. It must also reject positions advocating further expansion and relaxation of the grandfathering rules which would create undue congestion from systems expressly rushed into service to avoid the new sharing-oriented regulatory etiquette.

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<sup>4</sup> As CELLNET stated in its Petition and in its Opposition to the Petitions of the LMS Licensees, CELLNET generally supports the positions taken by members of the Part 15 community supporting the adoption of threshold standards for creating an irrebuttable presumption that Part 15 devices may not be considered a threat of harmful interference to LMS licensees and opposing changes to the technical specifications to which LMS systems must be designed. Given the extensive debate already in the record on these issues, CELLNET will rest on the discussion of these matters already contained in the CellNet Petition and CellNet Opposition.

In fact, the fundamental underpinnings of these two issues are identical: the LMS Parties want to take advantage of licenses issued under the old AVM rules, and for which virtually no construction has yet taken place, to effectively eviscerate the compromises developed in the *Report & Order* for the reasonable co-existence of Part 15 and Part 90 systems. In the case of wideband forward links, the LMS Parties would urge that the condition precedent to such uses -- testing to demonstrate the lack of interference to Part 15 uses -- should only apply to future licensees. In the case of grandfathering, the LMS parties would allow unconstructed systems to be developed under the older regulations, while minimally constructed systems could be expanded without reference to the new "sharing" approach. Neither proposal meets the spirit of the *Report & Order* compromises.

Among the most contentious matters before the Commission in the debate leading to the *Report and Order* was whether to allow LMS licensees to utilize wideband forward links. Pinpoint and Uniplex expressed interest in deploying such links; CELLNET and others in the Part 15 community demonstrated that the utilization of high-powered wideband forward links would likely cause severe interference to the operation of Part 15 devices. The Commission chose not to prohibit such uses in the future, but it was clearly

unwilling to accept the LMS proponents' suggestions that the problem identified by the Part 15 community was overstated. Instead, a Solomon-like compromise was conceived:

"We will permit the authorization of wideband forward links, but note that multilateration operations are conditioned on further testing". <sup>5/</sup>

Such testing was needed as a condition to such operations in order to demonstrate that use of wideband forward links and other aspects of the new multilateration systems would not, in fact, create undesirable interference to other authorized users of the spectrum -- including those unlicensed devices operating under Part 15. The FCC's statements on this matter could not have been clearer.

The rule itself is, however, somewhat ambiguous. On its face it directly applies the testing requirement only to MTA licensees. And the LMS Parties have noted this literal limitation for the testing obligation in their Oppositions. They uniformly oppose the suggestions by the Part 15 community that the testing procedures must be more fully developed, and further strongly oppose the notion that they must be applied equally to any LMS licensee -- existing or newly licensed -- that desires to operate wideband

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<sup>5</sup> Report & Order at para.76.

forward links or other new technologies under the provisions of the new, LMS oriented rules. <sup>6/</sup> They suggest instead that testing conditions should apply only to those licensees who obtain their licenses on an MTA basis. <sup>7/</sup> The problem is magnified by these same parties who claim that the grandfathering status should be substantially expanded.

There is no basis in the record for distinguishing existing licensees from those authorized for MTA licenses in the future in considering whether wideband forward links may create serious interference to Part 15 devices. In the absence of such evidence, there is no basis for deciding that the testing requirement should not apply to grandfathered licensees. The record does not show that any

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<sup>6</sup> Indeed, several of these parties now suggest that the provisions of Section 90.361, the threshold criteria for Part 15 devices, should not apply to grandfathered licensees. This argument further demonstrates these parties' unwillingness to accept the compromise approach to band sharing. It must be directly rejected by the agency on reconsideration, and a clear direction given that 90.361 is applicable to protect compliant Part 15 devices in all cases since the rule's effectiveness.

<sup>7</sup> Pinpoint (at 13, n.34, and 15) states that the grandfathered licensees should be excluded from the testing requirement, and that the duty to test should be discharged once the Commission approves a licensee's demonstration. SBMS (at 9-10) also believes that testing should not be required of grandfathered licensees and opposes the imposition of post-grant testing as unlawful. Teletrac (at 3) argues that any testing requirement must be instituted via a rulemaking and comment process.



existing AVM licensees makes use of wide band forward links, and thus there can be no prejudice to existing licensees if a "test before use" condition is imposed on the use of wideband forward link technology. And given the high probability of harmful interference that operation of wideband forward links can cause to Part 15 devices, the testing requirement must be applied to all licensees, whether a licensee is issued in the future as a result of an auction or such license would be grandfathered under the rules.

Similarly, the arguments of the LMS Parties in favor of expanded grandfathering under the new rules fly in the face of the intent of the *Report & Order* compromises. The proper purpose behind the grandfathering provisions is to protect those licensees who acted in reliance on the prior rules and invested in installing and operating AVM systems. The rules adopted, however, allow licensees without any vested construction to continue to operate, notwithstanding the lack of any prejudice from being subject to the new, MTA licensing scheme. And worse, the LMS community now seeks to broaden the grandfathering rules, to allow virtually unlimited expansion of grandfathered systems without any of the testing safeguards that have been imposed on new licensee's to protect the integrity of the sharing

balance created in the Report & Order.<sup>8/</sup> CELLNET has previously urged the Commission to restrict these provisions in order to prevent those licensees who engaged in mere speculation and in effect warehoused spectrum from being rewarded.<sup>9/</sup>

As the record in this proceeding now makes clear, expansion of the grandfathering provisions would only result in increased congestion in what is designed to be a shared frequency band, and would diminish the benefits of competitive bidding. Further, licensees of unconstructed and non-operational systems who had initially designed

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<sup>8</sup> Pinpoint (at 23) opposes CELLNET's position and supports the current grandfathering provisions because Pinpoint believes that these provisions operate to ensure the rapid introduction of LMS to the public. Pinpoint further states that the concern of spectrum warehousing can be addressed by limiting the number of grandfathered systems per licensee to twenty five BTAs. SBMS argues (at 21-22) for expanded grandfathering rights, urging that it should be authorized to relocate or add sites permissively within a 75 mile radius specified in its pending applications, claiming that SBMS was detained by the uncertainty of the interim rules. Teletrac (at 9) argues only that the grandfathering provisions should not be further restricted, stating that the current time limits for modifications necessary to comply with the new rules is already difficult to comply with. Texas Instruments Incorporated (at 23-24) supports permitting grandfathered systems to continue to operate indefinitely under the prior rules unless there is actual harmful interference, extending grandfathering to pending applications, and permitting changes to grandfathered systems.

<sup>9</sup> CELLNET Petition at 13-14; CELLNET Opposition at 12-14.

systems for AVM <sup>10/</sup> and essentially warehoused spectrum should not be permitted to now take advantage of the new LMS rules. Accordingly, CELLNET urges the Commission to reject arguments in favor of expanding the grandfathering provisions.

#### CONCLUSION

The Oppositions filed by the LMS community have not made any new and persuasive arguments to support their positions. To the contrary, they highlight the LMS Parties' fundamental desire to upset the opportunity for a fair sharing of the spectrum between true LMS operations and Part 15 devices. The effort to avoid many of the most critical elements of the sharing plan -- by expanding the likely uses of LMS spectrum well beyond the location and monitoring of vehicles and inanimate objects to a hybrid messaging service; by avoiding the obligation to demonstrate, in advance of commercial deployment, the likelihood that operations will not interfere with Part 15 devices; by urging removal of the non-rebuttable presumption of co-existence for Part 15 devices; and by seeking to

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<sup>10</sup> It should not be forgotten that the original scope of this proceeding was to make permanent AVM rules that had for two decades been "interim" in nature. For the LMS parties now to complain that they are somehow prejudiced by not being able to take advantage of newly liberalized uses of their AVM licenses is truly overreaching.

substantially expand the grandfathering provisions to reward the speculation and warehousing of licenses that has occurred over the past several years -- would be contrary to the public interest. To the contrary, it would only further burden the variety of advanced, consumer-oriented uses that must share the 902-928 MHz band. Accordingly, CELLNET respectfully requests reconsideration of the *Report & Order* as discussed in the CellNet Petition.

Respectfully Submitted,

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June 7, 1995

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I, M. Jeanette Couch, a secretary at the firm of Wilkinson, Barker, Knauer & Quinn, do certify that a copy of the foregoing Reply to Oppositions to Petition for Reconsideration was mailed this 6th day of June, 1995, via U.S. mail, postage prepaid, first class, to the offices of:

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